ISSN 1195-0226

Ontario Labour Relations Board HIGHLIGHTS

Editors: Voy Stelmaszynski, Solicitor
Leonard Marvy, Solicitor

September 2006

KEVIN WHITAKER

Effective September 1, 2006, Kevin Whitaker Chair of the OLRB, the College Relations Commission (CRC) and the Education Relation Commission (ERC), has been appointed by the government of Ontario as Agency Cluster Facilitator, Municipal, Environment and Land Planning Tribunals. This appointment is for a period of one year. As Facilitator, Mr. Whitaker will provide advice, assistance and recommendations to the government in order to accomplish the clustering of five tribunals in the Municipal and Land Planning sector. The participating tribunals are the Ontario Municipal Board, the Board of Negotiation, the Assessment Review Board, the Environmental Review Tribunal and the Conservation Review Board.

Mr. Whitaker will remain Chair of the OLRB, the CRC and the ERC during the period of the clustering exercise.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in August of this year. These decisions will appear in the July/August issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Certification – Construction Industry – In this application for certification in the construction industry the responding parties did not file information specified under subsection 128.1(3) of the Act or a response within the required time limits – A letter was filed with the Board by Easton's after the two-day time limit stating that neither it nor the other responding party is the employer of the individuals described in the applicant's bargaining unit – The applicant argued that the Board was precluded from considering the information offered by Easton's because subsections 128.1(3) and (4) required such information to be filed within the prescribed time limits, whereas the responding parties argued that the subsection does not apply to them in these circumstances because neither of them is an "employer" – The Board held that both statutory and labour relations policy support the conclusion that subsection 128.1(3) of the Act should not foreclose the Board's consideration of the information it deems appropriate in order to determine if a named responding party is the employer of those individuals working in the proposed bargaining unit – The Board further stated that the scope of the information required under subsection 128.1(3) of the Act does not include whether the entity named as a responding party is the employer – Accordingly considerations of this matter, where it is delivered beyond the time limits specified in Board Rule 25.5, depends on the exercise of the Board's discretion under Rule 40.7 – The Board held, given that Easton's letter was just a few days late and that the applicant did not allege it suffered any prejudice due to this delay, that it was prepared to extend the time limit for filing the responding parties' letter – Scheduled for hearing

EASTON'S GROUP OF HOTELS INC. AND 1406284 ONTARIO INC.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; File No. 0710-06-R; Dated: August 9, 2006; Panel: Corrine F. Murray (5 pages)

Construction Industry – Related Employer – Remedies – Sale of Business – In this 69/1(4)

application, a construction project was bid, obtained and undertaken by three separate non-unionized corporations: WSM (general contractor), Humphrey (a mechanical contractor) and South Side (a plumbing sub-contractor) – The applicant union was successful at certifying South Side, after which Morgan, the owner, President and sole Director of South Side and WSM, moved the plumbing work at South Side to Humphrey and WSM to avoid the application of the applicant's Provincial ICI collective agreement – The Board found there was no disposition of a business within the purview of s. 69, but did find that the three corporations were one employer for the purposes of s. 1(4) – The Board found on these rare and specific facts that a full related employer declaration in respect of Humphrey would operate to extend rather than preserve the applicant's bargaining rights – Since this result would be neither fair nor appropriate the Board exercised its "or otherwise" discretion under s. 1(4) and fashioned a remedy only binding Humphrey to the applicant's collective agreement when it engaged in construction industry work with South Side and WSM – Sale of business application dismissed; Related employer application granted

HUMPHREY PLUMBING & ELECTRICAL SERVICE LTD., SOUTH SIDE LTD. AND W.S. MORGAN CONSTRUCTION LIMITED; RE UA, Local 599; File No. 1588-03-R; Dated August 15, 2006; Panel: Jack J. Slaughter (26 pages)

Health and Safety – Reconsideration – Timeliness – The Board was asked to reconsider its decision dismissing an application appealing an inspector's decision not to make an Order, where the appeal was made beyond thirty days from the inspector's visit to the job site and his refusal to issue an Order, but within 30 days of having received a copy of the Premise/Project Form providing the information that no orders were issued – The Board found that the OHSA only requires a contravention order under s. 57 to be confirmed in writing and nothing requires an inspector to confirm in writing his or her refusal to issue an order – In the absence of a posting of an order the Board found the union reasonably ought to have known that the inspector refused to issue an order – Further the fact that the inspector subsequently faxed the Premise/Project Form to the union did not give rise to a new period of time in which the union could file its appeal – The provision of the Premise/Project Form at a later date does not mean that the inspector's decision occurred at some later time, nor does it provide the union with a new 30-day time period – The time limit begins from the day of the refusal to issue an order – Request for reconsideration dismissed

LASER ELECTRIC AND DIRECT ENERGY AND DIRECT ENERGY; RE IBEW, Local 586; File No. 0610-06-HS; Dated August 21, 2006; Panel: Susan Serena (7 pages)

Certification – Charter of Rights and Freedoms – Practice and Procedure – Representation Vote – Standing – In this application for certification, the employer sought a declaration that the representation vote was void, that a new vote should be ordered, and that the Board either translate the ballots into Chinese and Punjabi, and/or allow the presence and use of an interpreter to assist the voters at the vote – Issues addressed were: does the employer have standing to raise arguments relating to the Charter in this case; did the Board violate sections 2(d) and/or 14 and/or 15(1) of the Charter in refusing to allow translated ballots or the presence of interpreters at the vote; if the Board did violate sections 2(d) or 14 or 15 of the Charter is it justified under section 1 of the Charter; did the Board violate section 5 and 6 of the Ontario Human Rights Code in refusing to allow translated ballots and the presence of translators at the vote – The Board saw no reason to allow standing in a situation of a long established practice where no employee raises the issue despite numerous notices posted – The Board also considered the other issues and was not persuaded that the vote, as carried out, had breached either the Charter or the Code – The Board held that the certification process and representation vote procedures are not protected activities under s. 2(d) – The Board held s.14 to only be available to parties or witnesses, and since the individual employees, on whose behalf relief was sought, were neither parties to this application nor witnesses, the section did not apply – The Board adopted the reasoning from *R-Theta Inc.* and found no breach of s.15 – Certificate issued

MAPLE LEAF CONSUMER FOODS INC.; RE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENGERY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS); File No. 0462-06-R; Dated: August 8, 2006; Panel: Timothy W. Sargeant, R. O'Connor, D.A. Patterson (15 pages)

Bargaining Rights – Discharge for Union Activity – Interim Relief – Remedies – Unfair Labour Practice – The union sought interim reinstatement pursuant to section 98 of an

employee who, the union asserted, was an inside union organizer and was discharged for her organizing activity – The employer asserted that the employee was terminated due to her own misconduct (using profanity on the production floor) in accordance with its policies and procedures and without anti-union animus – The Board was satisfied that interim relief was necessary to prevent irreparable harm or to achieve other significant labour relations objectives, as her termination, as a supporter of the union and key inside organizer, may have a detrimental effect on the union's organizing drive – The Board was not concerned that the reinstatement of the employee could put the business at risk for the following reasons: the company did not immediately remove the employee from the workplace when it learned of the transgression, although it could have under its policy; the employee swore 4-5 times in four years, but only one time was it on the production floor and the company concedes that one instance of swearing on the production floor does not always result in termination; and lastly, there was no suggestion that there had ever been a client complaint arising out of the employee's use of profanity – In regards to s. 98(3), where there are numerous and significant factual disputes, the Board stated that it must assess the two stories and ask itself whether it appears the conduct of the employer is (applying the Board's experience) that of an employer which is engaged in a process free of anti-union animus – The Board held that it did not appear that the employer's decision to discharge the employee was unrelated to her exercise of rights under the Act and reinstatement is therefore an appropriate remedy – Reinstatement and posting ordered

SITEL CUSTOMER CARE INC.; RE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS); File No. 1232-06-M; Dated: August 9, 2006; Panel: Brian McLean (13 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Johnson Controls Ltd. and Brookfield Lepage	1634-04-R	Pending
TTC v. Amalgamated Transit Union Divisional Court No. 261/06	0618-06-U; 0620-06-U	Pending
Abduraham, Abdoulrab v. Novaquest Finishing Divisional Court No. 327/06	2222-04-ES, 2223-04-ES, 2224-04-ES	Pending
C.M.G. Innovation Co. v. Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 819 Divisional Court No. 06-DV-1234 OTTAWA	0652-03-R	Pending
D.M.S. Concrete & General Contracting v. Plasterer's Local 598 (Stated Case) Divisional Court No. 326/06	0330-06-G	November 3, 2006
D.M.S. Concrete & General Contracting v. Plasterer's Local 598 (Stated Case) Divisional Court No. 254/06	4212-05-G; 4213-05-G	November 3, 2006
Place Mont Roc v. United Steelworkers (Stated Case) Divisional Court No. 233/06	1684-05-U; 3719-05-U	Pending
City of Hamilton v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Sept./Oct. 2006
Guild Electric Limited et al v. IBEW, Local 1739 Divisional Court No. 202/06	4179-05-U; 4307-05-M	Pending
Elena, De Monelli Foerster v. Toronto Catholic District School Board (Civil Suit) Divisional Court No. 06-CV-310231PD1	1373-04-U	Oct. 31, 2006
Bricklayers Local 7 v. 921879 Ontario Ltd. et al Divisional Court No. 06-DV-1209 OTTAWA	3261-04-JD; 3504-04-JD	Pending
Gus Nedelkopoulos v. OLRB Divisional Court No. 78978/06 NEWMARKET	1838-05-U 2644-05-U	Pending
Greater Essex County District School Board v. International Brotherhood of Electrical Workers, Local 773 et al Divisional Court No. 126/06	1702-04-R; 3120-04-R; 3172-04-R; 3173-04-R; 3174-04-R	August 15, 2006 (reserved)
Kostantinos Iaonnidis v. Amalgamated Transit Union, Local 1572, Corp. of City of Mississauga, Transportation and Works Dept., Transit Division Divisional Court No. DC 0500947400	2287-04-U	August 30, 2006 (motion)
United Brotherhood of Carpenters v. United Brotherhood of Carpenters, Local 93 Divisional Court No. 01/06	2069-05-U; 3055-05-M	Pending
Gus Nedelkopoulos v. OLRB Divisional Court No. 77287/05 NEWMARKET	3704-04-U	Pending
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Pending
1333833 Ontario Inc. v. OLRB, Employment Standards Officer, Norstead Building Products Inc. Divisional Court No. DV-05-236	3559-04-ES	Dismissed – August 25, 2006
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Dismissed – May 31, 2006, seeking leave to appeal to C.A.

Case name & Court File No.	Board File No.	Status
Johnson Controls Ltd. and Brookfield Lepage	1634-04-R	Pending
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U; 3552-00-U	Dismissed – April 13, 2006, seeking leave to appeal to C.A.
Scaduto, Frank Divisional Court No. 382/05	1798-03-U; 4338-02-U	Pending
Tuquabo, Dawitt Divisional Court No. 03-DV-000935	2377-02-U	Dismissed Feb. 14/05; leave to appeal dismissed Jun 29/05; seeking leave to S.C.C.